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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Pai

Yang

(In the space above enter the full name(s) of the petitioner(s).)

___ Civ. 2022 (080) (24)

-against-

UNITED STATES

OF

AMERICA

**APPLICATION FOR THE COURT
TO REQUEST COUNSEL
PURSUANT TO 18 U.S.C. § 3006A(g)**

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

MEMO ENDORSED

I, PAI YANG, (print or type your name) am a party in this case and am unable to afford the services of an attorney. I hereby request the Court to grant my request for counsel to represent me in this proceedings.

1. In support of my application, I provide the following information:

A. Explain why you feel you need a lawyer in this case. (Use additional paper if necessary)

My CJA representation in Court of Appeals was in forma pauperis and as a Pro se Foreign National who now needs to file a electronic filings from overseas, I think a effective lawyer like my previous CJA Attorney could better assist me with further proceedings.

B. Explain what steps you have taken to find an attorney and with what results. (Use additional paper if necessary)

I have filed a motion of appointment of counsel along with my Memorandum to this Court in or around late September, 2022. It is difficult for me to find and afford a effective attorney when I am not physically present in the United States of America.

C. If you need a lawyer who speaks in a language other than English, state what language you speak:

2. In further support of my application, I declare that (check appropriate box):



I have previously filed a Request to Proceed *In Forma Pauperis* application in this proceeding, and it is a true and correct representation of my current financial status.



I have not previously filed a Request to Proceed *In Forma Pauperis* in this proceeding, and now attach an original Request to Proceed *In Forma Pauperis* application detailing my financial status.



I have previously filed a Request to Proceed *In Forma Pauperis* application in this proceeding, however, my financial status has changed. I have attached another Request to Proceed *In Forma Pauperis* application showing my current financial status.

3. I understand that if a lawyer volunteers to represent me and that lawyer learns that I can afford to pay for a lawyer, the lawyer may give this information to the Court.
4. I understand that if my answers on this application are false, my case may be dismissed.
5. **I declare under penalty of perjury that the foregoing is true and correct.**

Dated: 1/20/2023

/s/ Pai Yang

Signature

Defendant's request for appointment of counsel is hereby DENIED.

There is no constitutional right to counsel in proceedings brought pursuant to 28 U.S.C. § 2255. *See Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). The Criminal Justice Act ("CJA") provides that a court may appoint counsel to an indigent person in a § 2255 proceeding when "the interests of justice so require." 18 U.S.C. § 3006A(g). In determining whether to exercise this discretion, courts in this Circuit consider the same factors that apply to requests for *pro bono* counsel made by civil litigants. *See, e.g., Bennett v. United States*, No. 03-CV-1852, 2004 WL 2711064, at *7 (S.D.N.Y. Nov. 23, 2004) (Scheidlin, J.). These factors include the merits of the case, the complexity of the legal issues, and the movant's ability to investigate and present the case. *See Cooper v. A. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir. 1989).

Defendant's initial § 2255 submission, filed *pro se*, gives the impression that he would be capable of replying to the Government's opposition brief. In a 30-page memorandum of law in support of that motion, accompanied by various attachments, Defendant presents his arguments in detail.

To the extent Defendant's request for appointment of counsel reflects a concern regarding electronically filing from overseas, the Court has provided ample additional time to file a reply. (*See* January 26, 2023 Order, Case No. 18-CR-33.) In addition, Defendant has electronically filed the instant request for counsel, as well as a motion for extension of time, and thus appears able to file his submissions electronically.

The Clerk is respectfully directed to docket this Order on both the civil and criminal dockets. (*See* Case Nos. 18-CR-33, 22-CV-8024.)

SO ORDERED.

Dated: New York, New York
January 26, 2023

/s/ Kimba M. Wood

KIMBA M. WOOD

United States District Judge